

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



# TRANSCRIPT OF RECORD.

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Court of Appeals, District of Columbia **495**

OCTOBER TERM, 1907.

No. 1792.

No. 1 Special Calendar  
April Term 1908

No. 1, SPECIAL CALENDAR.

No. 1 Special Calendar  
October Term 1908

WILLIAM DAVIS, APPELLANT.

vs.

UNITED STATES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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FILED MAY 31, 1907.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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# In the Court of Appeals of the District of Columbia.

No. 1792.

WILLIAM DAVIS, Appellant,

vs.

UNITED STATES.

No. 1 Special Calendar

April Term 1908

a Supreme Court of the District of Columbia.

No. 25121. Criminal.

UNITED STATES

vs.

WILLIAM DAVIS.

UNITED STATES OF AMERICA, *District of Columbia*, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed, and proceedings had in the above-entitled cause, to wit:

1 *Indictment.*

Filed in Open Court Apr. 12, 1906. John R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a Criminal Term, April Term, A. D. 1906.

DISTRICT OF COLUMBIA, ss:

The Grand Jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath do present:

That on the eleventh day of April, in the year of our Lord one thousand nine hundred and six, there was at certain premises in the District aforesaid, commonly known as and called the Bennings Race Track, a certain event or contest called a running race of horses.

And the Grand Jurors aforesaid, upon their oath aforesaid do further present:

That on the said eleventh day of April, in the year of our Lord one thousand nine hundred and six, at the District aforesaid and at the premises aforesaid, one William Davis, late of the District afore-

said, did set up and keep a certain gaming table, to wit, a game, device and contrivance called Bookmaking on the race aforesaid, the said game, device and contrivance being then and there a game, device and contrivance at which money was then and there, and before the said race took place, bet and wagered by divers persons then and there present, upon the result of the said race, and which said game, device and contrivance called Bookmaking on the said race, was then and there, a gambling device adapted, devised and designed for the purpose of playing a game of chance for money, against the form of the statute in such case made and provided, and against the peace and government of the said United States.

DANIEL W. BAKER,  
*Attorney of the United States in and for  
the District of Columbia.*

(Endorsed): No. 25121 United States vs. William Davis. Violation of Section 865, of the Code of the District of Columbia. Witnesses: James Proctor, O. G. Stutler. A true bill, Edward H. Downs, Foreman.

3

*Arraignment.*

Supreme Court of the District of Columbia.

TUESDAY, November 13, 1906.

The Court resumes its session pursuant to adjournment, Mr. Justice Stafford, presiding.

No. 25121.

UNITED STATES

*vs.*

WILLIAM DAVIS.

Indicted for Violation of Sec. 865 of the Code of the District of Columbia.

Come as well the Attorney of the United States as the defendant in proper person, according to his recognizance, and by his Attorneys A. S. Worthington, De Lancey Nicoll and Herbert Barry, Esquires; and, thereupon, the defendant, being arraigned upon the indictment, waives the reading thereof and pleads thereto not guilty, and for trial puts himself upon the Country, and the Attorney of the United States doth the like; whereupon comes a jury of good and lawful men of the District of Columbia, to wit:

1. Samuel E. O'Brien,
2. Frederick W. Weil,
3. Ashby. Tanner,
4. William N. Thrift,
5. Clarence B. Tully,
6. James B. Shugrue,

7. William E. Harley,
8. Bernard M. Bridget,
9. Samuel C. Mulligan,
10. William W. Burnett,
11. John R. Ihrie,
12. Charles Volland.

who, being sworn well and truly to try the issue above joined, after hearing the evidence in full, are respited until the meeting of the Court tomorrow.

4

*Verdict, Sentence, Appeal, &c.*

Supreme Court of the District of Columbia.

WEDNESDAY, *November* 14, 1906.

The Court resumes its session pursuant to adjournment, Mr. Justice Stafford, presiding.

No. 25121.

UNITED STATES

*vs.*

WILLIAM DAVIS.

Indicted for Violation of Section 865 of the Code of the District of Columbia.

Come again the parties aforesaid in manner as aforesaid and the same jury that was respited yesterday, and, thereupon, after hearing the charge of the Court, the said jury retire to consider of their verdict and, returning into Court and being asked if they have agreed upon a verdict, the said jury upon their oath say that the defendant is guilty in manner and form as charged in the indictment herein; whereupon the defendant states that he desires that sentence be imposed upon him at this time; thereupon, it is demanded of the defendant what further he has to say why the sentence of the law should not be pronounced against him, and he says nothing, except as he has already said; whereupon it is considered by the Court that for his said offense the defendant be imprisoned in the United States Jail in and for the District of Columbia for the period of two (2) hours to take effect from the time of the arrival of the defendant at said Jail.

5 From the foregoing judgment, the defendant, by his said attorneys, notes an appeal to the Court of Appeals of the District of Columbia; and, thereupon, the defendant by his said attorneys, moves the Court to fix the amount of the bond for costs on such appeal, which motion is granted and the amount of such bond is fixed at One Hundred (100) Dollars; and the Attorney of the United States in open court waives the issuance of a writ of citation; \* \* \*

*Memorandum.*

November 30, 1906.—Appeal Bond approved and filed.

*Term Prolonged and Time to Submit Bill of Exceptions Extended.*

Supreme Court of the District of Columbia.

DECEMBER 14, 1906.

The Court resumes its session pursuant to adjournment, Mr. Justice Stafford, presiding.

\* \* \* \* \*

No. 25121.

UNITED STATES

*vs.*

WILLIAM DAVIS.

Convicted of Violating Section 865, Code, D. C.

Upon motion of Mr. A. S. Worthington, Attorney for the defendant, it is ordered that the present term of this Court be and hereby is prolonged to and including January 7, 1907, for the purpose of settling the bill of exceptions herein, and it is further ordered  
6 that the time for presenting to the Court the said bill of exceptions be and hereby is extended to and including the said January 7, 1907.

*Bill of Exceptions Submitted to Court.*

Supreme Court of the District of Columbia.

MONDAY, January 7, 1907.

The Court resumes its session pursuant to adjournment, Mr. Justice Stafford, presiding.

\* \* \* \* \*

No. 25121.

UNITED STATES

*vs.*

WILLIAM DAVIS.

Convicted of Violating Section 865 of the Code, D. C.

Come as well the Attorney of the United States as the defendant by his Attorney A. S. Worthington, Esquire; whereupon the defendant by his said Attorney tenders to the Court his bill of exceptions taken during the trial of this case, and the same is taken under consideration by the Court.



7

*Memoranda.*

January 10, 1907.—Time to file transcript of record in Court of Appeals, extended to and including March 1, 1907.

February 21, 1907.—Time to file transcript of record in Court of Appeals, further extended to and including March 20, 1907.

March 19, 1907.—Time to file transcript of record in Court of Appeals, further extended to and including May 1, 1907.

May 1, 1907.—Time to file transcript of record in Court of Appeals, further extended to and including June 1, 1907.

*Bill of Exceptions Made Part of Record.*

Supreme Court of the District of Columbia.

TUESDAY, May 14, 1907.

The Court resumes its session pursuant to adjournment, Mr. Justice Stafford, presiding.

\* \* \* \* \*

8

No. 25121.

UNITED STATES

vs.

WILLIAM DAVIS.

Convicted of Violation of Section 865, Code, D. C.

Now comes here the defendant, by his Attorney A. S. Worthington, Esquire, and prays the Court to sign and make a part of the record his bill of exceptions taken during the trial of this case and submitted to the Court on the 7th day of January, 1907, which is accordingly done *nunc pro tunc*.

*Bill of Exceptions.*

Filed in Open Court May 14, 1907. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a Term as a Criminal Court.

No. 25121, Criminal Docket.

UNITED STATES

vs.

WILLIAM DAVIS.

At the trial of this cause the United States gave evidence to the jury in substance as follows:

HARVEY GIVEN.

I am a clerk in the office of the United States Attorney in this District. On April 11th, 1906, I saw the defendant at Bennings

9 Race Track in the District of Columbia. I went there with Mr. Proctor of the District Attorney's Office, and Mr. Sutler of the Marshal's office, for the purpose of gathering evidence against the bookmakers. Mr. Samuel Ross, one of the Stewards of the Jockey Club, knew my purpose in going there. Through him, I was introduced to the defendant. I told the defendant that I was there for the purpose of making a case against him. I met the defendant in a place there that is commonly known as the betting ring. It is a large shed adjoining the grandstand, and a part of the grandstand. The whole floor of the grandstand and betting ring is one. The floor extends the whole length of the building. The sides are open; one of the open sides faces the race track, and the other open side is the one through which you come in from the grandstand. The side on the road as you enter the track is closed, as is also the end of it. Mr. Proctor, Mr. Sutler and myself made several bets with the defendant on the races, at least one of us betting on each race; he was standing about twenty or thirty feet from the entrance of this betting shed in a line with the other bookmakers. There were fifty or more bookmakers there. Each bookmaker was designated by a number on his little slate or memorandum pad, so that it could be observed by the public. Davis was Number six (6). In making the bets, I went up to the defendant, who was sitting on a stool. I simply handed him the money and named the horse on which I wanted to place the bet. He took the money and handed it to a cashier, or a man who stood back of him, who had control of  
10 a box, and he took the money and put it in the box. Then he cried out my bet to the sheet writer and it was recorded. These papers that I have in my hand are the bookmaker's sheets—they were gotten by me from the defendant after the races.

There were five or six men associated with the defendant. There were two or three stools in the stand; one of them the defendant occupied; another was occupied by the sheet writer who held this board on his lap, and recorded the bets as they were made. Then there was a man back of him, with this box, who took the money from the bettor, and placed it in the box. There were two or three other men standing around; they did not do much till after the race was over. The defendant occupied a stool, and had in his hands a memorandum sheet or slate, on which the names of the horses appeared which were to run in that race. It is the official program that is sold out there, and he simply had it attached by cleats. On this sheet, there were two or three lines of names in three places, in which he writes the odds he will give on a horse, beside the name of each horse. Here is a horse called Peter Paul. I put up a bet of \$1.00 and said, "Give me Peter Paul to win"—He was at 7 to 1. My ticket was #513. The sheet writer would write down on his sheet "513" in the column in which Peter Paul appeared "14 to 2" this means 7 to 1. If I played Peter Paul for a place, he would give me 2 to 1, and would put that in the "place" column, opposite the number of my ticket.

11 The bettors came right close up to the defendant. There were a great many bets made there. After the race was run, those who had won would come up and get in line. Each

man gave his number to the defendant who would look down on his sheet and see the number of the ticket and what the bet was, mark it paid, and give the man his money.

If I wanted to bet with the defendant on two or three races, I knew exactly where to go to find him, because if I won, I would go back to the same place to cash in.

There was room enough between the bookmakers to go through. You could not get between the defendant and his associates without pushing some stools out of the way. After the races were over, I went up to the defendant and told him that I wanted everything he had there, and he handed these things over to me—these sheets, this money box, and also this slate. I also got these stools and that small chair. (All the articles thus identified, were offered in evidence on behalf of the United States.)

I and my associates, and others, made bets with the defendant and others on that afternoon, and I saw the bets made in the manner above described, and saw the winners get their money from the defendant after the race was run, and saw the defendant write the bet on the sheets. Witness also testified to the making of bets on all of the races on that day except the first, several of which were won and paid by defendant.

(It is hereby agreed that all exhibits are to be used in the Court of Appeals the same as if set out herein.)

By Mr. BAKER:

12 Q. How often did you go to the Bennings Race Track during that week?

Mr. WORTHINGTON: We object to any testimony about other days except the day the District Attorney has elected to bring this prosecution on. Of course we all know that he is not bound by a date; but he has taken that date and we object to testimony about Mr. Davis' being there on other days.

Mr. BAKER: I want to find out whether Mr. Davis was a fixture out there.

The COURT: You offer to show what? That he was there on other days doing the same business

Mr. BAKER: Yes; on other days.

The COURT: Suppose he was not there, would you claim a conviction?

Mr. BAKER: Yes, if your Honor please. I may state that on the law we are going to make two contentions. One is that if this defendant was on the race track on this day, carrying on what is commonly called book making, receiving bets from a number of persons and making a sheet and recording those bets, he is guilty under the law, without any regard to whether or not he occupies a particular location. Should we not succeed on that point, we propose to make this, our second contention: We admit that A and B may go out to the races and make a bet or two bets and record them for the sake of remembering them, if they go there merely casually as C and D would go, or as Mr. Given went on this occasion. We admit that is not a violation of the law. But in this case we would claim

13 that this man Davis had a definite location of locality made not by the building of a stall or building, or any thing permanent, but made by these stools and the location of his men on the stools; that he was there not only on this day but on other days, and that he carried on there the business which has been described here by the witness.

Should we fail on the first proposition of law, this evidence would become material on the second proposition, to show that he was a fixture there.

Mr. Worthington has said something about the fact that he did not pay anything for being there, and that he had no connection at all with the jockey club himself. We are not trying that contention. If the jockey club is tried, then it will be time enough for them to set up a defense of that kind. But under our second contention we would ask the Court to hold that if this man went there and set up a permanent place, or had a particular locality and did the business of bookmaking, then, under the decisions, he was setting up a gaming table within the meaning of the law. Therefore, I say, that evidence as to whether or not Mr. Davis was there at other times would be material.

Thereupon the Court held that it would be well to receive the evidence objected to, in order that the District Attorney might raise the question suggested by him. To this ruling, counsel for the defendant duly excepted. Thereupon, the witness resuming, said:—"I went out to the race-track after that, and found the defendant practically in the same place, I was out there six or eight times during the whole meeting, and I have been at the Bennings Race Track at other meetings a great many times, and have been at other  
14 meetings at other tracks. I have been going to the meetings at Bennings ever since that track was opened, which was at least ten years ago. I have observed that the bookmakers recorded the bets, substantially during that period in the same manner that I have already described. Thereupon, the District Attorney asked the witness to tell what the system was of recording bets at that time. To this question, counsel for the defendant objected on the grounds that the evidence called for was not competent or relevant in the case on trial. But the court overruled the objection, and allowed the question to be answered to which ruling of the court counsel for the defendant duly excepted.

The witness resuming said:

They all had uniformly ruled sheets in columns. The names of the horses would be written at the top of the columns. There were four columns. The names of the horses would be written at the top of each column and the number of the bettor or bettor's ticket in one column. If the bettor played the horse to win, the bet would be recorded in the winning column; if the bettor played the horse to run second, the bet would be recorded in the second column; if he played a horse to run third, the bet would be recorded in the third column; if he played a horse to win, to run second, and to run third, the bet would be recorded in each respective column.

When the Bennings track was first opened, and for some years afterwards, the betting was done differently there—it was done by recording the bets on sheets; according to the old way there were

15 booths built there at the race track in the betting ring which the bookmakers could occupy. Instead of having one of those little slates, there would be a stationary blackboard upon which would appear the names of the horses and the odds given by the bookmaker. He would bet in the same manner, and instead of giving the number of your ticket you would receive from them a ticket upon which would be recorded your bet. As to the sheets that were written by the sheet writer, I cannot describe as accurately as I can this. It is some years since I have seen one, but it records the bet and the amount.

As to the difference between the old way and the present way of betting at Bennings, the individual was a little better protected in the old way. He had his ticket and he knew exactly what his bet was. There would be a stationary place for the bookmaker to be found where he would do business.

On the eleventh day of April, last, they would take the number of my ticket which was # 513 or the number of Mr. Proctor's ticket which was 521, or the number of Mr. Stutler's ticket, which was 556, and the number of the ticket would appear, and the bet which was made carried out in the betting column.

Thereupon the District Attorney asked the witness if he knew from his experience whether or not the actions of the defendant described by him, were what is commonly called "book-making."

To this question, counsel for the defendant objected on the ground that the question was one for the court or the jury and not for a witness; but the court overruled the objection, and allowed  
16 the question to be answered, to which ruling of the court, counsel for the defendant duly excepted. Thereupon, the witness said in answer to the question, that in his experience, what the defendant had been doing on the 11th day of April 1906, described in his testimony is what is commonly called bookmaking.

#### Cross-examination:

I have made more or less bets at every meeting I have attended at Bennings. On the 11th of April, 1906, I was making the bets in my capacity as Assistant District Attorney. On other occasions, I made the bets for my own amusement and pleasure. I always trust to my memory about my bets. I buy a program, and did buy one on the 11th of April last. I bought it in the grandstand from one of the boys who was selling official programs. I bought it before making the bets to which I have testified. I have not been able to find my program among the papers. I have found those of Mr. Proctor and Mr. Stutler. I do not think I recorded any of the bets on my program, but they were recorded on one of the programs kept by my associates. They,—Mr. Stutler and Mr. Proctor made the record. Between us, we kept a record on one of the programs of the different bets we made. None of us has been indicted. On the elev-

enth of April, I saw the man who made these sheets write the bets. There was no difficulty in getting to the man's stool, or the man who was writing on the sheets—none when you got up to the defendant.

17 There was some difficulty in getting to him sometimes, on account of the crowd of people who wanted to place bets.

The place that I have described is a part of the grandstand—an extension of the grandstand. In the numerous visits I have made to the Bennings track, I have observed them betting in no other places than that referred to by the District Attorney, and referred to by me as a "betting ring." I noticed it up-stairs in the grandstand and also in the club-house.

As to the defendant's place, which I have said was twenty or thirty feet from the entrance; I could not tell any more nearly whether it was twenty or thirty feet. By the words "from the entrance" I mean the imaginary partition line between the grandstand proper and this big shed. That is what I mean by the "entrance"—it is one floor—one sweep. The whole place has a granolithic pavement clear through. Everybody who went into the enclosure had the privilege of going into this part of the place. When I said that the defendant on other occasions was practically in the same place, I meant that I could not tell whether the legs of the stools were in the same spot that I saw them the day before, or the day after. He might have been five feet one way or the other next day or maybe ten;—that is what I meant when I said practically in the same place. There were more bookmakers on some days than on other days, so that on some days they would spread out a little more than on others. Some parts of what was commonly called the betting

18 ring would be vacant when there would not be so many bookmakers there. These stools are around the grandstand in the bottom—I never saw any of them up stairs. I have seen men standing on the stools. I saw the stools around the lunch counters there. The lunch counter is on the first floor of the grandstand proper.

They had the booths I have spoken of, from the time the Bennings track was opened, whatever year that was, till along the time the Miller case was tried in 1895. The booths were stationary built-up fixtures there. There was a blackboard built in the booth, and part of it. At that time the men who occupied the booths would write out on a ticket what your bet was, and give it to you. The man who kept the booths had desks or tables on which their sheets rested to write on. The booth was a permanent place built there.

About the same time, there were operations going on in Washington, of the same character, at a place called the "Marble Saloon" at the corner of Ninth and Pennsylvania Avenue. It moved out to the boundary at the time of the passage of the act of 1888 prohibiting the making of books in the City of Washington. It continued at the boundary until the passage of the act of 1891, prohibiting the making of books in the City or within a mile thereof. What was done at this place in the City and at the boundary was substantially the same thing that went on at the booths. When the

booths were in use, one man would occupy the same booth through the entire meeting.

19

SAMUEL ROSS.

I am familiar with the Bennings race track. It is in the District of Columbia. On April 11th, 1906, races were being conducted there. The meeting commenced about the 27th or 28th of March, 1906, and continued up to about the 14th of April.

JOHN M. WILLIAMS.

My occupation is that of book-keeper. Not book-maker. I am familiar with some of the Western race tracks in this country, and a few of the Eastern. I have visited the race tracks at Lexington, Ky., Louisville, Ky., Toronto, Can., Hamilton, Can., Ft. Erie, Can., and Buffalo, N. Y. I was at Bennings at the Spring meeting of 1906, once or twice. Prior to that, I had been at Bennings very few times.

I think there was a particular way in which book-makers recorded their bets, and I am familiar with that way. Thereupon the witness was asked the following question "Will you examine the sheets I refer to, the same being composed of six sheets and tell us what they are?" (The sheets referred to being the six identified by the witness Given).

Witness then answered:

They are commonly called bookmakers' sheets as they are records of bets. I know how they do the betting at Bennings. I cannot  
20 say I am very familiar with it. I am positive that I was not at Bennings over twice during the Spring meeting of 1906, I was there but very seldom before. I have made it a practice not to go to Bennings much in the last ten years,—or to any races around Washington. I was there once last fall, and I do not think that I had been to Bennings for three or four years previous to that. I have a knowledge of what bookmaking is. I could go in the booth and make a book;—write sheets, and write tickets. Thereupon the District Attorney asked the witness the following question;—

"Suppose a person should go to the Bennings race track and find a man there with a memorandum of this kind, showing certain horses that were to run in a certain race, with the odds marked to the right of the horses, showing a number above, No. 6 in this case, and he would be there receiving bets of a number of persons, which bets would be recorded on these sheets that you have just examined, and after the race you would see people return there, and from that record receiving money; what would you say as to whether or not that man was a bookmaker?"

To this question, counsel for the defendant objected on the ground that it was asking the witness to take the place of the jury; but the court overruled the objection, and allowed the question to be answered, to which ruling of the court counsel for the defendant duly excepted.

In answer to the question, witness said,—"It is commonly called bookmaking."



## 21 Cross-examination:

I never was a bookmaker. I never kept any such sheets as those in evidence here, and never had anybody keep them for me. I have made bets with bookmakers in the betting ring. I think I made one or two small ones at Bennings in the Spring of 1906. I do not think I made any bets in the Fall of last year when I was there. I have always stayed away from Bennings because I was employed in a position where I did not think it would be advisable for me to frequent race tracks at Washington. I am not interested in this controversy and do not know how I came to be a witness. It is a surprise to me. The first notice I got was Friday afternoon when I was called to the District Attorney's office.

Thereupon the witness HARVEY GIVEN was recalled on behalf of the United States and upon examining the sheets that were put in evidence in connection with his testimony, he said that the races referred to on these sheets were run on the 11th day of April, 1906.

Thereupon the District Attorney announced that the case for the United States was closed.

Thereupon the defendant called as a witness in his behalf SOLOMON LICHTENSTEIN, who testified, in substance, as follows: I live in New York and make bets on race tracks. I was at the Bennings Race Track on the 11th day of April, 1906. I was at that spring meeting every day, and am familiar with the method of making bets at that track in April last.

22 Prior to 1895 I had a booth at Bennings. The booth was an enclosure higher than this witness stand—a box-shaped booth. I had a pedestal like this (indicating). I had a sheet writer and ticket writer. In front of the booth there was a large hole, with a large blackboard on it, with my name above it. Any individual bookmaker at that time had his name above the blackboard. We had a slate and a great big paper with the horses' names on it, and opposite those horses' names were posted the odds. If anybody wanted to bet me, I would take his money; my ticket writer would write his ticket; and I would hand the ticket to the man, whoever he might be, which was all the token he had of the bet to my knowledge. At that time the token did away with his making any memorandum. We hired the booths from the racing associations. The name of the bookmaker was printed on the booth and on the slip. Each man leased his own booth.

When the Ives pool bill in New York City came in existence—at that time we paid the Associated Jockey Club.

No layer of odds pays any association at the present time. The method of making bets which I have described by means of a booth leased to the occupant, with all the other matters I have detailed, we called bookmaking amongst ourselves. What we were doing in the month of April, 1906, we do not call bookmaking. What we are doing now is distinctly and decidedly different from what we were doing then in the following respects:



23 In the olden times we had a ticket with our names on. Each individual bookmaker had a ticket, numbered, with his name on, and we gave it to the man that bet, which was a recognized token of the bet made. At the present time I am no more a bookmaker than the man that bets with me is a bookmaker. We are both layers. In other words, as frequently happens—in fact, I see a gentleman in front who has done this thing with me several times—the public becomes the layer. Mr. Ross, and the gentleman standing behind Mr. Nicoll, has on innumerable occasions taken the field and made me the presumed layer on the horses.

This is the practice amongst all the bookmakers—layers—and it was so in 1906 to the best of my knowledge. In April, 1906, neither I, nor the defendant, nor the other persons who went there for the purpose of making bets, had any particular place assigned to him by the association.

As to the use of the stools at Bennings—I would find a stool and take it to look at the races, or take it to sit down upon—that was my principal use of the stool, to get on top of it with a pair of field glasses and watch the races. The stools were all over the grounds—they were used by the public indiscriminately as well as by the layers. It looked to me like first come first served—the fellow who grabbed his stool first had it. I have seen the stools all over the racing grounds.

Thereupon the witness was interrogated as follows:

Q. Mr. Lichtenstein, did the gentlemen who went there to bet on the 11th of April, 1906, confine their betting to any particular place? A. I have made bets on the grand stand and in the club house, and in fact in the field.

24 Mr. BAKER: I move that answer be stricken out as not responsive to the question.

The COURT: It may be stricken out. Read the question.

The question was read as follows:

“Q. Mr. Lichtenstein, did the gentlemen who went there to bet on the 11th of April, 1906, confine their betting to any particular place?”

The COURT: Say yes or no to that.

A. No.

By Mr. NICOLL:

Q. Where else did they bet? A. In the club house, on the grand stand, and in fact all over the grounds. I have bet personally all over the grounds.

Q. Was that true of the other persons who went there to make bets? A. I should judge they had the same privileges I had. I had no special privilege.

Mr. BAKER: I move that the answer be stricken out as not responsive to the question.

By Mr. NICOLL:

Q. Well, did you observe what the others did? A. No; I did not. (A pause.) Can I qualify that answer, Judge?

The COURT: Yes.

A. I have seen innumerable people bet in the club house, as well as this enclosure they speak of.

25 Q. Did you observe any of the persons who were known as layers of odds making bets elsewhere? A. I did.

Cross-examination.

By Mr. BAKER:

Q. What is your occupation, Mr. Lichtenstein? A. One of my occupations is layer of odds. I am a book publisher—my main business.

Q. You also belong to an association of bookmakers, do you not?

A. I belong to an association of layers.

Q. What is that association, tell us? A. The Metropolitan Turf Association.

Q. Where does it operate? What is it? What does it consist of? Tell us that.

Mr. WORTHINGTON: Why is that competent, your Honor?

A. It consists of an association——

Mr. WORTHINGTON: Just one moment, please.

The COURT: Do I understand you object to that?

Mr. WORTHINGTON: I object to it as not proper cross examination.

Mr. BAKER: I want to show that this man is a bookmaker; that he belongs to the association of bookmakers; that he goes about over the country to race tracks as a book maker; and when he comes here and calls himself a layer of odds, it is a play on words.

26 Mr. WORTHINGTON: I do not object to this stating what he does. Of course we have put him on the stand and he has told that what he does is not book making.

The COURT: He has undertaken to say, I think, that is not book making, and in cross examination of that, I think you have a right to pursue the line indicated. I am not so sure about this question.

By Mr. BAKER:

Q. What is the Metropolitan Turf Association? A. It is a social body. It has its own club house, and is associated principally for the laying of odds as I said.

Q. What do you mean by that? A. I mean that we bet on everything or anything; prize fights——

Q. Does Mr. Ross belong to it? A. Mr. Who?

Q. Mr. Sam Ross? A. No, sir.

Q. Does Mr. Howland belong to it? A. No, sir.

Q. Does Mr. Davis belong to it? A. I think he does: I couldn't swear to whether he does or not.

Q. What connection has this Metropolitan Turf Association with the Bennings Race Track? A. None whatever.

Q. Does it pay any dues or fees to the Bennings Race Track? A. No, sir.

27 Q. Does it designate the man who are to go there? A.  
No, sir.

Q. What advantage do you derive by belonging to this association?

Mr. WORTHINGTON: Is that within the cross examination, your Honor, as to whether he is a book maker or not?

The COURT: Sometimes it is not fair to the cross examiner to ask too closely what he is after at the time. I think he may proceed on that line and we will see what will be developed.

Mr. WORTHINGTON: It looks to me like a fishing expedition.

The COURT: Do not get too far away.

A. What is your question, please?

By Mr. BAKER:

Q. What is the advantage of belonging to this association? A.  
None whatever.

Q. You were at Bennings at the last race? A. The last race?

Q. I mean the last meeting, the spring meeting? A. The spring meeting? yes, sir.

Q. What was your number there? A. I never had any designated number. That is, I probably had a dozen different places that I occupied at the time.

Q. Did you have any number? A. I had probably a dozen numbers.

28 Q. Tell us how your number was arranged. Take one day that you had a certain number. How was your number arranged? A. If there were 45 or 50 of our association, the Metropolitan Turf members, our secretary, the secretary of our association, would designate our relative numbers.

Q. What would you do when you received a number; say, for instance, the number 10? A. If I felt so inclined, I would occupy the tenth position from a given point.

Q. If you felt so inclined? A. Yes. I did not have to take that position.

Q. You did, as a matter of fact, take that position during the month of April, or take the position designated by the secretary for you? A. Yes.

Q. So did all the other book makers who were out there? A. They could have. I don't know whether they did or not. They could or not, as they chose.

Q. What was Mr. Ross's number? A. Mr. Ross?

Q. Yes. A. He is not a member of our association, and therefore our secretary had no jurisdiction.

Q. You said Mr. Ross was there doing just exactly as you were doing, awhile ago, did you not? A. Yes.

29 Q. I ask you what was his number? A. I am sure I don't know anything about Mr. Ross' number.

Q. Was he given a number? A. If he was, he was given one by his association, not by mine.

Q. Was he in the place where the book makers were? A. Not to my knowledge.

Q. Tell us just exactly what these layers of odds, or book makers, did after they got these numbers? A. They assumed the positions given to them by their secretary.

Q. And proceeded to do business, did they not? A. And made bets, or received bets from the public.

Q. Tell us exactly how they did business. Tell us how it was done there. A. Why, they stood there. They had the ordinary program the same as the rest of the people had.

Q. You say they had an ordinary program, the same as the rest of the people had? A. Yes.

Q. Did they have anything else? A. They had that program there, similar to that (indicating). Yes, they had that.

Q. How did they hold that? A. They held it in their hand.

Q. Did they hold it looking at it themselves, or did they hold it out to the public to look at? A. I speak for myself. I held it that way. (Illustrating), just as I have got it here now.

30 Q. For what purpose? A. To keep myself familiar with the odds, and show anybody that wanted to see the respective odds against different horses.

Q. Did you change them at different times? A. Yes.

Q. How did you change them? How did you go about changing them? A. For instance, if you came to me——

Q. No; suppose you wanted to change the odds on that paper there, the odds on a horse; how would you do it? A. I would scratch that out and put another one on.

Q. You would tear this sheet off, would you not? A. No; I never did.

Q. You did not have one of these things (indicating) with a whole lot of sheets on? A. Yes; I had exactly this paraphernalia.

Q. And you held it out to the public to look at? A. I held it in my hand, just as I am holding it now.

Q. So that they could see it? A. Yes, sir; they could see it if they wanted to.

Q. How did that differ from the slate that you say a book maker had—I mean as to what was on it? A. The slate was done with chalk on a blackboard.

31 Q. I mean as to what was written on it. How does this differ from a slate? A. This is a program.

Q. Take that paper there containing the names of the horses and the odds. What would a slate have on it? A. The names of the horses and the odds.

Q. Just the same as that has there? A. No; it is not the same as this.

Q. Why not? Would the slate have the jockeys? A. Yes.

Q. Well, the jockeys are on there, are they not? A. A man put this on for his own convenience.

Q. I am not asking you why the man put it on. I am asking you to state how that differed from the slate. A. The slate was entirely——

Q. I mean as to what was on it, Mr. Lichtenstein. A. It didn't differ at all.

Q. It was the same thing? A. It had the horses' names and the odds posted against them.

Q. It had just exactly the same as the slate? A. Yes, sir.

Q. And the slate was up where the public could see it? A. Yes.

Q. And this was where the public could see it? A. It was in my lap.

Q. You did not hide the odds? A. I didn't have it for the public's convenience. I had it for my own.

Q. How many people made a bet with you, we will say, 32 on a race out there? A. Two hundred.

Q. How did they find out the odds? A. They saw it on the memorandum.

Q. Did you show it to anybody? A. It was there. They could see it if they wanted to.

Q. You did not have it made for the 200 people who came to bet with you? A. I beg your pardon?

Q. You did not have your memorandum made for the 200 people who came to bet with you, but merely for yourself? A. No; I had it for their convenience as well as mine.

Q. That was the use of the slate, also, was it not? A. I call it a program.

Q. I mean the original blackboard they used? A. That was a regular slate.

Q. That was exactly for the same thing you used this for, was it not? A. Yes.

Q. Did you sit on a chair when you were taking these bets?

Mr. WORTHINGTON: You do not call those things chairs, do you?

33 Mr. BAKER: Stools, we call them.

A. Sometimes.

Q. Taking the arrangement of the book makers out there, after the secretary designated your number, how did the book makers arrange themselves, including Davis, if you know? A. They took the positions allotted to them by the secretary of their association.

Q. After a race where would they be? A. They would be within a fair radius of where they were the race before.

Q. How long would they stay in the position given them by the secretary of the association? A. Sometimes two days, three days, four days, whichever they saw fit.

Q. In other words, that was their place, where they were to do business? A. That was the place assigned by their secretary.

Q. Yes, for them to do business? A. Yes.

Q. When a bet was made; how would it be done? Tell us as far as the changing of the money is concerned. A. Well, an individual would come up to me and say "I will bet you \$10 on"—what is the top horse's name there; Duke of Kendall?

Q. Yes; Duke of Kendall. A. I would lay him 25 to 10, Duke of Kendall.

Q. Then what would happen, as far as your record was concerned? A. I would have a clerk who kept a memorandum  
34 of that bet, and if it won, he paid.

Q. And what would become of the money? A. The man who won it would get it, if the horse won.

Q. I mean before the race? A. I would hand it to an assistant.

Q. And your clerk would record your bets, would he not? A. Yes.

Q. That was the custom, the way it was done out there at Bennings? A. Yes.

Q. As far as the bettor is concerned, what difference was there in the old way of betting, that you call bookmaking? A. I gave him a token. I gave him a ticket.

Q. You would merely give him a receipt for the money? A. I would give him a receipt.

Q. That was the only difference, was it not? A. Yes.

Q. As I understand you, then, the only difference between what you call bookmaking and what you call the laying of odds, or what you do out at Bennings, is that the old bookmaker had a booth and the old bookmaker gave a receipt. That is the only difference? A. Those are two of the differences.

Q. Are there any more? I am talking about between  
35 yourself and the bettor? A. Under the present system the bettor himself makes a memorandum, the same as the layer does.

Q. You mean instead of getting a receipt, he makes a memorandum of your number and of the money he has given you? A. Exactly.

Q. In other words, he makes a receipt for himself? A. He makes his own receipt.

Q. Is there any other difference? A. I can't think of any at the present moment.

Q. As far as giving up money or winning money or losing money is concerned, it is exactly the same, is it not? A. That is for you to judge.

Q. No; I am asking you; you are the expert. A. What is the question again?

Q. I say as far as winning or losing money and the conducting of the betting, as far as the odds are concerned, it is exactly the same as bookmaking, is it not? A. There is very little distinction that I can see.

Q. What is the distinction, if any? A. The distinction is that I would give a man a receipt for his money under the old system.

Q. I am not talking about the receipt. I am talking about winning or losing the money. There is absolutely no difference? A. There is no difference in winning or losing money.

36 Q. If a man would win from you he would know where to come back to get his money, would he not? A. Yes, sir.

Q. In other words you would not move your position? A. Yes; I would frequently move my position.

Q. You mean from one day to another, but you would not change your number from one race to another? A. I would stay in the same position for the convenience of the bettor that one day.

Q. Did not your association require you to stay in the same position? A. No, sir.

Q. You testified about your taking bets in the grand stand. Is it not a fact that in 1905 and 1906 bets in the grand stand were prohibited at Benning? A. Not to my knowledge.

Q. How did you take bets in the grand stand? Tell us about that. A. Well, I would go to the grand stand and would be looking at the race, and men would say so and so would win, or so and so would win, or this one or that one would win, and I would lay them that it would not.

Q. Would you go back and put it in your book? A. Sometimes I would and sometimes I would not.

Q. In other words, you would go to the grand stand to drum up business? A. No; I didn't go there for the purpose of drumming up business.

Q. You went there to see the race? A. I went there to see  
37 the race. Other times I would go down to the club house.

When I come down to this country I always bring my wife with me, to give her three or four weeks' vacation, and she goes in the club house. I would go in the club house and spend the interval with my wife there, and I have bet a number of times in the club house.

Q. Would you bring them back and put them in your book? A. I would if I felt like it.

Mr. WORTHINGTON: What do you mean when you say "put them in your book?" I have not heard of any book.

Mr. BAKER: He testified he kept a book.

By Mr. BAKER:

Q. You kept a book of each race? A. Sometimes if I was at the place where the sheet writer was, I would put them on the sheet.

Q. You kept a sheet of each race? A. Yes.

Q. And at the end of the races you took and made them up and kept them? A. Yes.

Q. And this (indicating) is the kind of sheet? A. Something like that.

Q. That is just exactly about the same kind of sheet that the bookmakers kept under the old system? A. No, that is not the same thing. It is practically the same thing.

Q. In other words, under the old system, they put down the number of the bet, when you numbered them, instead of the  
38 number of the ticket? A. Exactly.

Q. Now, you put down the number of the ticket or the name of the person for the purpose of identifying that person? A. Exactly.

Q. Under the old system, the odds during the betting on a race would shift, would they not? A. Oh, yes.

Q. And they do now? A. Yes.

Q. Is there any difference? A. Certainly not.

Q. What makes them shift? A. The money bet on a horse would change the odds, the same as in any other business.

Q. Explain why that is, will you? A. It is the same as any other business. It is supply and demand.

Q. Is it not a fact that when you are taking bets, you have a record, and you notice how much money is being put on a certain horse, and you try to even up your book by having money placed on other horses, and in order to do that you change your odds? A. I can illustrate it in a better way if you will allow me.

Q. I want you to. A. Assuming a layer has only a thousand dollars, and that is all the money he has got, and the odds against the horse are ten to one, and a fellow comes up and says, "I will bet you a hundred on that horse," you say, "All right; I will lay a thousand to a hundred." Naturally he has no more money to lay against that horse, and he has to wipe him off and get something else to lay against.

Q. That is making a book, is it not? A. That is making a book, or laying the odds, under the new system.

Redirect examination.

By Mr. NICOLL:

Q. Mr. Lichtenstein, in describing what you did, have you also described what the other persons who were there to make bets did? In telling what you did, have you described what the others generally did? A. Well, I don't know. I have been answering questions so quickly that I don't really know what I have testified to.

Q. You have described that you had some stools at a certain place, and that you stayed there for a while for the convenience of the bettors; then you went to the grand stand; then you went to the club house; then you returned. I ask you whether in describing that you described what the others did also?

Mr. BAKER: I object to that, because he has already testified to it.

The COURT: The witness may take his chances, I think, if he wants to answer it generally, if he thinks it is safe to do so.

A. The others did the same as I did. They go from one part of the grounds to another. They go to the club house and bet with the layers and other people and amongst themselves in the club house, on the grand stand, or in that enclosure which is described.

Q. Did you sometimes makes bets against horses and sometimes on them? A. Frequently on them and frequently against them. In fact, it is safe to say I lay as much on horses as I lay against them, every race that comes on.

By Mr. BAKER:

Q. On your own book? A. I bet on horses just as much with other layers.



Q. With other layers, but not on your own book? A. I wouldn't want to——

Q. In other words, you are betting against the public with your own book. A. I wouldn't want to rob Peter to Pay Paul. There would be no use taking it out of one pocket and putting it in the other.

By Mr. NICOLL:

Q. Mr. Lichtenstein, was it the practice to make any change of position during the course of the races? A. Oh, yes,—do you mean the course of the races or the course of the race meeting?

Q. First, of the race meeting? A. We would change our  
41 positions probably three or four times.

Q. Suppose on any given day some one person dropped out, would you not change your position? A. Yes.

Q. Change your place?

Mr. BAKER: You mean during the day?

Mr. NICOLL: During the day.

A. We would move up or down as we saw fit.

Q. So that your positions were relative, but not fixed on any particular spot? A. No, sir; they were never fixed.

Recross examination.

By Mr. BAKER:

Q. Your number for each day was fixed? A. There were no numbers assigned to us at all. We put the numbers on ourselves—we as individuals.

Q. When you got No. 10—— A. I would put that on myself, because I was relatively in the 10th position from a given point.

Q. You never changed it to number 9 during that day? A. No.

Q. Or to any other number? A. No.

By the COURT:

Q. How did the bettor know where to find you? A. That  
42 was the reason we kept that relative position, to allow the bettor to find us.

Q. And you kept the number in order to keep the relative position. A. Yes, sir.

Q. There is one other question that has occurred to me. I do not know that I quite understand what you said was on the ticket under the old way of bookmaking. What did the old ticket contain? A. I can illustrate with this envelope if you will allow me, judge.

Mr. BAKER: Does your Honor mean the ticket he gave to the bettor?

The COURT: Yes.

A. We gave him a ticket about that size (indicating). In this corner was a large number, or in some corner of it. On top of it was my name, Soloman Lichtenstein, bookmaker. This number was here (indicating), and it was ruled off in this way (indicating).

If he bet on Governor Hughes, we would put the bet down, a thousand to a hundred, against Governor Hughes.

Q. It showed the horse he bet on, and the amount, and the odds.

A. And with whom he bet it.

Q. You say you sometimes went off and made bets, as I understand it, which you did not enter on the sheet at all. A. Frequently.

I do it daily.

43 Q. There you simply acted as anybody else would who would make a bet. It was not a part of your business that you were keeping a record of? A. It all went in; it was all one business.

Q. But when you went out and made an individual bet like that, did you expect a man was coming around to where you were to get it, or was that a private matter that you would see him some other time about? A. Well, if I would see him I would pay him, or he would come to my place. He would find out where I was, or where I was located, or come to my office in town and get the money for his wager.

Q. Usually those cases were with people you knew, I suppose?

A. Oh, of course.

Q. But where you have your stools, any of the public came up and did business with you, whether they knew you or not, I suppose?

A. Yes, sir.

By Mr. BAKER:

Q. When you went out on the grand stand to get these bets, did you drop your business and your number? A. I didn't go out on the grand stand to get these bets.

Q. When you went out on the grand stand, had you shut down your business? A. Yes; when I left that place——

Q. In other words, you had closed it up for the race?

44 A. My business followed me. Nobody does business but me. If I bet, no matter where I bet, that is my place of business, and that designated position you are speaking of is vacant.

Q. The bets you made when you went on the grand stand were made after you had closed up your place of business for the race?

A. The bets I made when I went on the grand stand were just the same as I made when I was in that place.

Q. I want to know about the condition of your business, whether you left your man taking bets? A. No man takes bets for me at all.

Q. You left your box and sheets there? A. I never had a box. I don't use any boxes.

Q. Your sheets? A. My sheets were left there.

Q. And you had closed down the betting there and gone on the grand stand to see the race? A. As I tried to explain to you before, my betting follows me. Nobody bets for me but myself.

Q. I want to understand how you acted at the last race out there, whether you had a certain time you would close up your business and your number and go on the grand stand, or were they only

casual bets you made on the grand stand? A. It may be my personal popularity, but wherever I go, people want to bet with me.

Q. They may think you easy. A. Well; possibly I am.

45 By the COURT:

Q. You spoke of having a clerk, I think, and somebody who took the money—someone who wrote on the sheet and someone who took the money? A. Yes.

Q. Those were not with you when you made these other bets you speak of? A. Occasionally one of them might have been with me, but it was a rare exception when they were.

This was all the evidence in the case. Thereupon the counsel for the defendant moved the court to instruct the jury to render a verdict of not guilty.

The District Attorney objected to the granting of the motion, and the court sustained the objection and refused to so instruct the jury.

To the ruling of the court counsel for the defendant duly excepted.

Thereupon counsel for the United States requested the Court to give to the jury the following instruction:

“1. The jury are instructed that if they find from the evidence beyond a reasonable doubt that on the eleventh day of April, 1906, or within any time within three years prior to the finding of this indictment, that there were certain premises in the District of Columbia, commonly known as and called Bennings Race Track, and that at said track there was a certain event or contest called a running

46 race of horses, and that the defendant at the District aforesaid, did set up and keep a certain gaming table, that is to say, at said race track aforesaid, carry on a game, device or contrivance called book-making on a horse race about to be run, then they are instructed as matter of law that the defendant is guilty as charged in the indictment.”

To the granting of this instruction counsel for the defendant objected, but the court overruled the objection and gave the instruction to the jury, to which ruling of the court counsel for the defendant duly excepted.

Thereupon counsel for the United States asked the Court to give to the jury the following instruction:

“2. The jury are instructed that if they find from the evidence, beyond a reasonable doubt, that the defendant was present on the premises mentioned in the first prayer, in the part commonly known as the betting ring, and had apparatus or paraphernalia which he used in his business consisting of a memorandum or slate which exhibited and announced the odds he would give on the horses in the races about to be run; a sheet on which he, or his associate or agent, recorded or registered the bets which persons then and there might make with him on the horses in the races about to be run; and if the jury should further find that such arrangement or outfit as above described was sufficient and adequate for the purposes of

receiving the bets, or wagers by divers persons on the horses in the races about to be run, and that the defendant was then and there before the races were run ready to receive bets or wagers as  
47 aforesaid from divers persons, and that he did then and there receive on the date mentioned in the indictment, or on any day within three years prior to the finding of the indictment, bets or wagers upon the races about to be run; and should the jury further find that the defendant was situated and was to be found before and after the said races so run in a known and ascertainable location in the betting ring on the premises aforesaid, then they are instructed as matter of law that the defendant was setting up a gaming table by engaging in this manner in the game, device and contrivance called bookmaking."

To the granting of this instruction counsel for the defendant objected, but the court overruled the objection and gave the instruction to the jury, to which ruling of the court counsel for the defendant duly excepted.

Thereupon at the request of counsel for the defendant the court gave to the jury the following instructions:

1. The jury are entitled to consider all the evidence and they are the sole judges of the facts.

2. The jury must not consider any remarks of the court in connection with the motion to dismiss as in any way determining the question of facts or as an intimation of any view upon the facts that he considers the jury must take.

3. The making of a bet upon a horse race does not constitute the setting up of a gaming table.

4. The mere making of a number of bets upon a horse race  
48 does not constitute the setting up of a gaming table.

5. It is immaterial whether the bets made be upon any horse or horses or against the horse or horses.

10. Some forms of bookmaking may be carried on under such circumstances as not to constitute the setting up of a gaming table, bookmaking may also be carried on under such forms or with such accompaniments as to constitute a gaming table.

11. The mere act of bookmaking is not necessarily the setting up of a gaming table.

Thereupon counsel for the defendant asked the court to give to the jury the following instructions:

6. It does not create betting upon a horse race an offense by reason of the fact that records of the bets are made by the bettor or by some one for him.

7. The circumstance that a person betting upon a horse race makes or exhibits a memorandum of the odds at which he is willing to bet does not constitute an offense or change the betting into an offense.

8. The sitting upon a stool while betting or offering to bet is not an offense.

9. The mere fact of holding oneself out as ready to bet with members of the public generally does not of itself constitute the offense of setting up a gaming table.

12. It is for the jury to determine whether the acts performed by this defendant were such as to constitute the offense of setting up a gaming table.

49 13. If the defendant had a fixed and definite place for carrying on bookmaking, he would be guilty of the offense charged. If he did not he would not be guilty. And it is for the jury to determine upon the evidence whether he had such a place or not.

14. If the defendant merely engaged in making bets such as he could have made without any accessories such making of bets does not constitute the setting up or keeping of a gaming table.

15. It is for the jury to determine upon the evidence whether the form of betting engaged in by the defendant was bookmaking.

To the granting of each of said instructions counsel for the United States objected, and the court sustained the objection to each of them and refused to give any of said instructions to the jury, to which ruling of the court as to each of said instructions, counsel for the defendant separately excepted.

Thereupon the court charged the jury as follows:

The charge here is that on the 11th day of April, in the present year, there was at certain premises in the District commonly known and called the Bennings Race Track, a certain event or contest called a running race of horses, and that on the same day on the said premises, the defendant did set up and keep a certain gaming table,—that is to say, a game, device and contrivance called bookmaking on the race aforesaid, the said game, device and contrivance being then  
50 and there a game, device and contrivance at which money was then and there, and before the said race took place, bet and wagered by divers persons then and there present upon the result of the said race and which said game, device and contrivance called bookmaking on the said race, was then and there a gambling device, adapted, devised and designed for the purpose of playing a game of chance for money against the form of the statute, etc.

In this case, there is evidence tending to show that on the day stated, there were certain premises called the Bennings race track, and upon these premises a certain event or contest called a running race of horses. There is evidence tending to show that on that date and in that place, the defendant was engaged in a transaction which some of the witnesses have called bookmaking. There is evidence tending to show, then, that he was then and there engaged in bookmaking. There is evidence tending to show that he had a card or slate upon and by which he exhibited to the public the odds which he was willing to give upon certain horses, or upon certain horses in the race; that he was exhibiting that card or slate to the public, and offering to make those bets. There is evidence tending to show that he had a sheet and a writer to keep upon that sheet a record of the bets which were taken in such a way that after the contest was over the bet could be identified. There is evidence tending to show that the bettor was told the number of his bet, so that after the contest was over, if he had won, he could return and identify his bet by the

record, or have it identified, and claim and secure his winnings. I say the evidence tends to show that. It tends to show that he had there a box in which the money was received and placed—  
51 the money which the bettors passed in—and had a cashier in charge of it. It tends to show that he had a few stools grouped together where he was carrying on this business with the public. It tends to show that he had a number which had been assigned to him by the Secretary of an organization of layers of odds to which he belonged, and that by virtue of that assignment, he occupied for that day, a place corresponding to the number which had been assigned to him. The evidence tends to show that there was there in that place, a ring of such layers of odds, members of the organization to which he belonged, some fifty of them, I believe, and that each had his number and occupied a place corresponding to his number.

The evidence tends to show that this business of bookmaking was conducted by the defendant according to such a system that if one came and laid a bet with him, there would be a record of the bet made, there would be a number by which the bet and the bettor could be identified, and after the contest if the bettor won, he could identify his bet by that number and the record, and claim his winnings. The evidence tends to show that the defendant occupied a place on that day sufficiently definite on that day to enable bettors to find him, to know where he was to be found, and to return to him after the contest and claim their winnings of him. The evidence tends to show that there was no substantial change in the position he occupied during the day in question.

If you find all those facts established, which I just said the evidence tends to show, if you find them all established beyond  
52 a reasonable doubt, you would be justified in finding therefrom that he was then and there setting up and keeping a gaming table or a gaming device, because it has been held by the Court of Appeals in this District, that bookmaking so conducted and carried on is a gambling device, or a gaming table within the meaning of the statute. But it is necessary that you should find all those facts established in order to find that the defendant did set up and keep a gaming table or a gambling device, that is to say, bookmaking, as charged in the indictment.

Then, beyond that, you must find that divers persons did, on the date named, resort to him at this place, and carry on this business with him, and did lay bets with him. That is charged in the indictment, and is part of the charge. The evidence tends to show that divers persons did those things with him, on that day at that place. It is necessary that you should find that the bet was wagered on the contest or event which was then going on, because that is what is charged here. No question, I think, has been made in regard to that.

It is charged here that this transaction or business that was going on, was commonly called bookmaking. That is one of the charges here, and there is evidence tending to show that such was the fact. That is one of the facts to be found by you.

It is also alleged that this betting in the way I have stated took place between the defendant and divers persons present at the place stated and before the contest, the running took place. There  
53 is evidence tending to show that, and that is to be found by you as one of the essential facts in the case.

In view of what has been stated by the counsel for the defendant, it may seem strange to you, that I give some of these requests for prayers, but I do it in order to keep the record straight.

I charge you, as requested, that the jury are entitled to consider all the evidence, and they are the sole judges of the facts.

I charge you, as requested, secondly, that the jury must not consider any remarks of the Court in connection with the motion to dismiss as in any way determining the question of facts, or as an intimation of any view upon the facts that he considers the jury must take.

I charge you, as requested in their third request, that the making of a bet upon a horse-race does not constitute the setting up of a gaming table.

I charge you, as requested, by their fourth request, that the mere making of a number of bets upon a horse-race does not constitute the setting up of a gaming table.

And according to their fifth request, it is immaterial whether the bets made, be upon any horse or horses, or against a horse or horses.

And as requested by their tenth request, some forms of bookmaking may be carried on under such circumstances as not to constitute the setting up of a gaming table. Bookmaking may also be carried on under such forms or with such accompaniments as to constitute a gaming table.

54 And as requested by their eleventh request, the mere act of bookmaking is not necessarily the setting up of a gaming table.

As I understand it, the essential of the offense of setting up a gaming table, to wit, bookmaking, is that the bookmaking should be so conducted as that the bookmaker is offering the public to make bets with them at certain odds which are exhibited to them on a card or slate or some such means and is offering to have a record made of such bets so as to identify the bet and the bettor, in order that, if he wins, he may return and get his winnings; and that such a record shall be kept and is being kept, and that in doing that business he is occupying some certain place, such that he is identified with it, and may readily be found by the persons who have occasion to do business with him, especially by those who have laid bets with him before the contest, and wish to return and claim their winnings afterwards. It is necessary that he should be occupying the same place for that purpose. If he is conducting that sort of a business in that way, at such a place, he is setting up a gaming table—that is to say, bookmaking—in that place. That is the essential element of the charge of setting up a gaming table, that is to say, bookmaking, as charged in the indictment; and all those elements you must find established beyond a reasonable doubt.

To so much of the foregoing charge of the court to the jury as sets forth what is essential to the commission of the offense charged in the indictment, counsel for the defendant duly excepted.

55 Each of the foregoing exceptions was duly taken by counsel for the defendant at the time it appears to have been taken and before the jury retired to consider their verdict, and was at the time noted by the presiding Justice upon the minutes of the Court, and the defendant, by his counsel prays the Court to sign this his bill of exceptions, which is done accordingly, this 14th day of May, 1907, now for then.

WENDELL P. STAFFORD, *Justice*.

*Directions to Clerk for Preparation of Transcript of Record.*

Filed May 21, 1907.

In the Supreme Court of the District of Columbia.

No. 25121, Criminal Doc.

UNITED STATES

*vs.*

WILLIAM DAVIS.

The appellant, William Davis, hereby designates the following portions of the record which he desired to be included in the transcript on the appeal granted in the above entitled cause as sufficient for the determination of questions arising on said appeal.

1. Indictment.
2. Plea of defendant.
3. Verdict.
- 56 4. Order prolonging term.
5. Sentence and appeal therefrom.
6. Bill of exceptions.
7. Orders extending time for filing bill of exceptions.
8. Memorandum of appeal bond approved and filed.

A. S. WORTHINGTON,  
*Attorney for Defendant, William Davis.*

Approved:

D. W. BAKER,  
*U. S. Attorney, D. C.*

57 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 56, both inclusive, to be a true and correct transcript of the record,



according to directions of counsel herein filed, a copy of which is made part of this transcript, in cause No. 25,121, Criminal, United States *vs.* William Davis, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the city of Washington, in said District, this 29th day of May, A. D. 1907.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1792. William Davis, appellant, *vs.* United States. Court of Appeals, District of Columbia. Filed May 31, 1907. Henry W. Hodges, Clerk.